IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

Chapter VIII, Rule 32(2) (b)
Description of case

W.P. No. 61 of 2001 (M/S) decided on 17.07.2003

M/s Indian Drugs & Pharmaceuticals ltd.& ors--Petitioner
Vs
The Presiding Officer, Labour Court and another --Respondents

A.F.R. (Approved for Reporting)
~~Not approved for reporting~~

Date:-17/7/2003 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

RESERVED
Court No. 2

(1) Civil Misc. Writ Petition No.61 (M/S) of 2001

M/s Indian Drugs & Pharmaceuticals Ltd.,
Virbhadra, Rishikesh, District-Dehradun …….. Petitioner.

Versus

The Presiding Officer, Labour Court
And another …….. Respondents.

(2) Civil Misc. Writ Petition No. 62 (M/S) of 2001

M/s Indian Drugs & Pharmaceuticals Ltd.,
Virbhadra, Rishikesh, District-Dehradun …….. Petitioner.

Versus

The Presiding Officer, Labour Court
And another …….. Respondents.

(3) Civil Misc. Writ petition No. 65 (M/S) of 2001

M/s Indian Drugs & Pharmaceuticals Ltd.,
Virbhadra, Rishikesh, District-Dehradun …… Petitioner.

Versus

The Presiding Officer, Labour Court
And another …….. Respondents.

(4) Civil Misc. Writ Petition No. 66 (M/S) of 2001

M/s Indian Drugs & Pharmaceuticals Ltd.,
Virbhadra, Rishikesh, District-Dehradun ……. Petitioner.

Versus

The Presiding Officer, Labour Court
And another …… Respondents.

(5) Civil Misc. Writ Petition No. 67 (M/S) of 2001

M/s Indian Drugs & Pharmaceuticals Ltd.,
Virbhadra, Rishikesh, District-Dehradun …… Petitioner.

Versus

The Presiding Officer, Labour Court
And another ..…… Respondents.

(6) Civil Misc. Writ Petition No. 68 (M/S) of 2001

M/s Indian Drugs & Pharmaceuticals Ltd.,
Virbhadra, Rishikesh, District-Dehradun …… Petitioner.

Versus

The Presiding Officer, Labour Court
And another …… Respondents.

(7) Civil Misc. Writ Petition No. 69 (M/S) of 2001

M/s Indian Drugs & Pharmaceuticals Ltd.,
Virbhadra, Rishikesh, District-Dehradun …… Petitioner.

Versus

The Presiding Officer, Labour Court
And another …… Respondents.

(8) Civil Misc. Writ Petition No. 71 (M/S) of 2001

M/s Indian Drugs & Pharmaceuticals Ltd.,
Virbhadra, Rishikesh, District-Dehradun …… Petitioner.

Versus

The Presiding Officer, Labour Court
And another …… Respondents

(9) Civil Misc. Writ Petition No. 72 (M/S) of 2001

M/s Indian Drugs & Pharmaceuticals Ltd.,
Virbhadra, Rishikesh, District-Dehradun …… Petitioner.

Versus

The Presiding Officer, Labour Court
And another …… Respondents.

(10) Civil Misc. Writ Petition No. 73 (M/S) of 2001

M/s Indian Drugs & Pharmaceuticals Ltd.,
Virbhadra, Rishikesh, District-Dehradun …… Petitioner.

Versus

The Presiding Officer, Labour Court
And another ..…… Respondents.

(11) Civil Misc. Writ Petition No. 75 (M/S) of 2001

M/s Indian Drugs & Pharmaceuticals Ltd.,
Virbhadra, Rishikesh, District-Dehradun …… Petitioner.

Versus

The Presiding Officer, Labour Court
And another …… Respondents.

(12) Civil Misc. Writ Petition No. 76 (M/S) of 2001

M/s Indian Drugs & Pharmaceuticals Ltd.,
Virbhadra, Rishikesh, District-Dehradun …… Petitioner.

Versus

The Presiding Officer, Labour Court
And another …… Respondents.

(13) Civil Misc. Writ Petition No. 77 (M/S) of 2001

M/s Indian Drugs & Pharmaceuticals Ltd.,
Virbhadra, Rishikesh, District-Dehradun …… Petitioner.

Versus

The Presiding Officer, Labour Court
And another …… Respondents.

……..

Hon'ble P. C. Verma, J.

All these writ petitions have been filed impugning the award dated 23.12.1999 made by the Labour Court by one and common judgment, holding respondent no. 2, in all these writ petitions, workmen of the petitioner and cessation from their work amounting to retrenchment in violation of provisions of Section 6-N of the U.P. Industrial Disputes Act and directed the reinstatement of all the respondent no. 2, in all these writ petitions, and further awarded Rs. 5,000/- as compensation and Rs. 500/- as litigation expenses to each workman in all these writ petitions considering the weak financial position of the petitioner.

Petitioner-M/s Indian Drugs & Pharmaceuticals Limited (for short IDPL) is a public undertaking fully owned and controlled by the Government of India. It has its unit at Virbhadra, Rishikesh, District-Dehradun. The policy for appointment of the widows/ dependents of the workmen dying-in-harness is in force in the IDPL. Several applications for employment as workman were moved by the widows and the dependents of the workmen who died in harness in the Rishikesh Unit but no decision was taken and the families of the deceased workmen were facing starvation. Other disputes apart the union also took up this issue and dispute was settled between the management of IDPL, Rishikesh unit and the union to provide them job contract. In the term of agreement it was agreed between the parties that till they are not regularly appointed workmen, they shall be engaged on job contract. Pursuant to the agreement the respondent no.2, in all these writ petitions, were engaged on job contract and were working. They were being paid minimum of pay scale of a workman. They were allowed to retain the quarters in which they were living and the house rent was being deducted from their wages. Apart from the house rent, other deductions were made from the wages of the respondents like the regular workmen.

The IDPL-petitioner's Company went in loss and it was declared a sick industry under the provisions of Sick Industrial Companies (Special Provision) Act. The Board directed the Government of India to release the rehabilitation package for making the Company viable. Other measures were also suggested to make the Company viable. One of the measures was to control and regulate the manpower. According to the petitioners, while considering this aspect of the suggestion, the corporate office of the Company at Haryana took a decision to discontinue the contract labour system and also directed to review and not to continue the job contracts which were to expire on 30/31 July, 1998. In compliance of the aforesaid decision of the corporate office the job contracts of the respondent no.2, in all these writ petitions, were not

renewed and they were not allowed to resume the work form 1st August, 1998. The dispute was referred to the Labour Court. The Labour Court adjudicated upon the reference in accordance with the prescribed procedure and gave the impugned award.

The Labour Court dealt with the question as to whether the respondent no.2, in all these writ petitions, were contract labours or really they were workmen. In order to find out the correct nature of the employment, the Labour Court has taken note of the following facts:-

(A) It is undisputed that there is a policy in the Employers' Establishment to employ the dependents of deceased employees according to their educational qualifications. This fact is also clear from the letter dated 5/11-10-1984 and 22.8.1985 of the Corporate Office of the Employers. But, for some period it was not being done due to critical financial condition of the Employers and on repeated demands of the Union, there was an agreement between the Employers and Union on 12.08.1988 that in order to save the dependents of the deceased employees from starvation, they would be employed on contact basis till the instructions from Corporation Office are received and it was ensured that they would be given payment of minimum wages. This fact is admitted in para nos. 2,3 and 5 of the written statement of the employers.

(B) Pursuant to the aforesaid settlement, the employers assigned job contracts to the dependents of the deceased employees (which includes the petitioner-workmen). This fact is also confirmed from para no. 5 of the written statement of the employers. The workmen also filed the copy of the job contract orders.

(C) As per para nos. 14 and 15 of the written statement of the Employers due to declaration of sick industry and bad economic condition of the Company, it was decided by the employers that job contracts which were going to expire on 30/31 July, 1998 would not be extended and accordingly on the expiry of the job contracts on 30/31 July, 1998, petitioners/workmen were not allowed to work. This may not termed as termination or retrenchment by the employers.

(D) There was another condition in the job contract orders that concerned workmen would discharge duties mentioned in the order as per the directions of the officers of the employers and necessary material relating to their work would be supplied to them by the Employers Establishment. This fact establishes control of the Employers on the Workmen.

(E) Job contracts were given for small period (three months) and their duration was extended upto 30/31 July, 1998.

(F) The work assigned in job contract (grilling, sweeping the floor, fitting of glass panes, cleaning, identifying and removing electric defects, overhauling and maintenance of electric motors, control panels and light fittings, cleaning of stairs and putting the waste material in the dust bins, and different work of office, as maintenance of records, dusting of furniture, etc. are perennial in nature and cannot be said to be non-related work to industry.

(G) Deduction towards the provident fund was being made from the salary of the workmen as their contribution and employer was also contributing.

(H) In the documentary evidence filed by the workman, the copy of order dated 4.12.1995 of the Personnel Manager of the employer, is important which reveals that the dependents of the deceased workmen who were engaged as contract labourers according to their educational qualifications (Graduate, Intermediate and High Scholl) would be classified as Skilled and semi-skilled and would be paid the wages of semi-skilled category admissible under the Minimum of Wages Act and those who had not passed High School would be paid the pay of unskilled category admissible under the Minimum of Wages Act and accordingly the services of the workmen in these two categories were utilized.

(I) It appears from the monthly attendance sheets and registers filed by the employer that the employees of the employers were entering the attendance of the workmen. It is also revealed from the certificate given to the workmen that they were working since long i.e. 5.06.1996 and one of the workmen Sri Om Prakash was working for the last ten years and his assignment was being changed time to time. This fact also establishes the control of the employers on the workmen.

(J) These workmen were living in the houses allotted to the deceased employees.

The Labour Court, on the basis of aforesaid facts, held that the respondent no.2 in all these writ petitions, were workmen and their services were terminated in violation of provisions of Section 6-N of the U.P. Industrial Disputes Act.

Two points were raised to challenge the award made by the Labour Court by the petitioner; firstly the respondent no.2, in all the writ petitions, were not the workmen; and secondly they were job contractors/contract labourers as they were appointed in terms of the agreement as contract labours.

Both these points are independent. The Labour Court has given categorical finding that respondent no.2, in all these writ petitions, are workmen. This finding is based on facts recorded by the Labour Court as noticed above. These undisputed facts clearly establish that there was direct relationship of master and servant between the petitioner-employer and the respondent no.2 in all these writ petitions. The petitioner was ultimate employer. The employment of the respondent no.2, on a job contract, was a way out to give employment to the dependents of the workmen who died in harness till the clear instructions with regard to their employment was received from the corporate office in compliance of the settlement arrived at between the Manager of the Rishikesh unit, petitioner-company and the office bearers of the workmen union and was in furtherance of the policy of the petitioner to give employment to the dependents/widows of the workmen who died in harness.

Thus, the Labour Court has rightly held the respondents no.2 in all these writ petitions to be workmen.

Yet there is another aspect on the basis of which the respondents no.2, in all these writ petitions, are workmen. Respondent no.2, in all these writ petitions, were engaged by the petitioner's unit at Rishikesh in compliance of the settlement dated 12.08.1988 between the employer and workmen-union. The settlement has been defined under Section 2 (p) of the Industrial Disputes Act, 1947 which reads as under:-

"2.(p) 'settlement' means a settlement arrived at in the course of conciliation proceeding and includes a *written agreement* between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such *agreement has been signed* by the parties thereto in <u>such manner as may be prescribed</u> and *a copy* thereof has been sent to an officer authorized in this behalf by the appropriate Government and the conciliation officer."

The manner is prescribed under Rule 58 of the Industrial Disputes (Central) Rules, 1957, relevant extract of which is reproduced as under:-

"58.*Memorandum of settlement.*- (1) A settlement arrived at in the course of conciliation proceedings or otherwise, shall be in Form '*H*'.

(2) The settlement shall be signed by-

(a) in the case of an employer, by the employer himself, or by his authorized agent, or when the employer is an incorporated company or other body corporate, by the agent, manager or other principal officer of the corporation;

(b) in the case of the workmen, by any officer of a trade union of the workmen or by five representatives of the workmen duly authorized in this behalf at a meeting of the workmen held for the purpose;

© in the case of the workman in an industrial dispute under Section 2-A of the Act, by the workman concerned.

The settlement arrived at between the parties in the instant case has not been disputed to be in accordance with the Rule 58 and is a settlement as defined under Section 2 (p) of the Industrial Disputes Act, 1947.

The sub section (1) of Section 18 of the Industrial Disputes Act provides that such a settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

The sub section (1) of Section 19 of the Industrial Disputes Act provides that such a settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

The sub section (2) of Section 19 further provides that such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

Thus, the settlement between the employer and employees acquires a statutory status and engagement made as a result of such settlement may be by way of a job contract cannot be said to be a job contract and the employees cannot be said to be contract labourers. In fact, they are workmen in view of their engagement being the result of a statutory settlement under the Industrial Disputes Act. Therefore, the respondent no.2, in all these writ petitions, cannot be said to be contract labourers but are workmen.

Undisputedly, respondent no.2, in all these writ petitions, were not allowed to resume their work from 1st pf August, 1998 which amounted to retrenchment in violation of provisions of Section 6-N of the U.P. Industrial Disputes Act as held by the Labour Court and the Labour Court rightly held that the cessation amounted retrenchment in violation of provisions of Section 6-N of the U.P. Industrial Disputes Act and directed for their reinstatement with compensation of Rs. 5,000/- and also Rs. 500/- as litigation expenses in each case.

Therefore, the impugned awards do not call for any interference by this Court in exercise of its power under Article 227 of

the constitution of India. Moreover, no error of law in recording concurrent finding of fact by the Labour Court is pointed out. All these petitions are devoid of merit and are hereby dismissed. Stay order granted in all these writ petitions is vacated. No order as to costs.

Dt. 17.07.2002 **(P. C. Verma, J.)**
P.Singh